

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 03-4073

United States of America,

Appellee,

v.

Kendall William Jacobs,

Appellant.

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Appeal from the United States
District Court for the
Northern District of Iowa

[UNPUBLISHED]

Submitted: May 19, 2004

Filed: May 21, 2004

Before MELLOY, HANSEN, and COLLOTON, Circuit Judges.

PER CURIAM.

Kendall W. Jacobs pleaded guilty to willfully failing to pay child support, in violation of 18 U.S.C. § 228(a)(3). The district court¹ declined to impose a split sentence under U.S.S.G. § 5C1.1(d)(2), sentenced Jacobs to 11 months imprisonment and 1 year supervised release, and ordered restitution of \$67,979.39. On appeal, Jacobs's counsel has moved to withdraw, and has filed a brief under Anders v.

¹The Honorable Linda R. Reade, United States District Judge for the Northern District of Iowa.

California, 386 U.S. 738 (1967), suggesting that the district court abused its discretion in not granting Jacobs a split sentence.

We find that the district court understood its authority to impose a split sentence, and thus its discretionary decision not to do so is unreviewable. See 18 U.S.C. § 3742(a); United States v. Smotherman, 326 F.3d 988, 989 (8th Cir.) (per curiam) (appellate court lacks jurisdiction to review district court's exercise of discretion in setting sentence within properly determined Guidelines range), cert. denied, 124 S. Ct. 293 (2003); United States v. Garcia-Ortiz, 310 F.3d 792, 793-94 (5th Cir. 2002) (district court's discretionary refusal to impose split sentence under § 5C1.1(d) does not fall within criteria listed in § 3742(a)). We also have carefully reviewed the record in accordance with Penson v. Ohio, 488 U.S. 75 (1988), and have found no nonfrivolous issues.

Accordingly, we grant counsel's motion to withdraw, and we affirm.
